IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 293 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SADGUNBHAI B VAKIL

Appearance:

MR B.B.Naik with MANISH R BHATT for Petitioner

Mr.B.D.Karia with Mr.R.K.Patel for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

The following question of law has been referred under Section 256(1)of the Income Tax Act at the instance of the Revenue to this Court:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in confirming the view taken by the Commissioner of Income-tax (Appeals) that 50% share of income in the firm of M/s. P.Vakil & Co., belonged to the said trust and therefore, the same cannot be included in the total income of the assessee?"

2. The assessee is a Managing Trustee of "B.G.Vakil Family Trust" which is settled by him by contributing an amount of Rs.75,000/- to the corpus during the years 1972-73 and 1973-74. As a trustee of the firm of M/s. P.Vakil & Co in his return of income, the assessee claimed that the partnership share in the said firm was not liable to be included in his hands but should be included in the hands of the beneficiaries of the Trust. As the Tribunal has upheld the contention of the assessee, the Department has approached this Court by way of this reference.

3. Learned Counsel appearing for the assessee placed before us a order passed by the Division Bench Court in ITR 130 of 1985 decided on 23.11.1989 in the case of The Commissioner of Income tax Gujarat - II, Ahmedabad Vs. B.G.Vakil Family Trust, Ahmedabad. The Division Bench relying on the decision in the case of K.T.Doctor Vs. C.I.T. 124 I.T.R. 501 held that the assessee in this case i.e. B.G.Vakil Family Trust is liable to be assessed for the 50% share of the income. In the said order, the income sought to be assessed in the hands of the present assessee has been held to be liable to be assessed in the hands of the B.G.Vakil Family Trust.

4. In view of the fact that the disputed income has been assessed in the hands of B.G.Vakil Family Trust, the same income cannot be assessed in the hands of the present assessee i.e. one of its trustees. Consequently, the reference has to be answered in favour of the assessee and against the Revenue. The Reference thus stands disposed of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(M.S.Shah, J)

jitu